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LEGAL LOG

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MIRANDA WARNINGS Need in Traffic Offenses

This issue of the Legal Log will attempt to shed some light on the problem faced daily by police officers, that is, must Miranda warnings be furnished to a subject in custody for a traffic offense?

In an effort to resolve this thorny question, a review of the Miranda decision is required. In 1966 in *Miranda v. Arizona*, 384 U.S. 436, the U. S. Supreme Court handed down a landmark decision which serves as the standard in all confession cases.

Miranda was arrested for the kidnapping and forcible rape of an eighteen-year old girl. Miranda was twenty-three years old, indigent, had a ninth grade education and had an emotional sexual illness. After being identified by the victim at the police station, Miranda was taken to a room where he was interrogated. Miranda confessed within two hours, without force, threats, or promises being made by the police. The defendant Miranda was not informed of his right to remain silent or that he could have an attorney. The Supreme Court held that Miranda was deprived of his Fifth Amendment right against self-incrimination, and that in the future, a confession will be valid only after the police had advised the defendant of four rights. These rights must be clearly understood by every police officer. These rights must be furnished when two conditions exist:

- 1.) A suspect is in custody
- 2.) The police intend to question

In an effort to better disseminate information on legal matters that affect law enforcement officers, we are pleased to present to you the LEGAL LOG.

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An in-custody situation must exist and the police intend to interrogate before the Miranda rights are required. The rights are (1) that a suspect has the right to remain silent; (2) that anything he says may be used against him in court; (3) he has the right to have the presence of an attorney; (4) if he can not afford an attorney, one will be appointed to represent him.

Once the aforementioned rights are given, the subject must voluntarily, knowingly, and intelligently waive his rights; otherwise, any confession obtained will be inadmissible in Court.

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One area of the law that still remains uncertain is on-the-scene questioning. When an officer is conducting an on-the-scene investigation of the crime where the questioning of witnesses and possible suspects is involved, should Miranda warnings be furnished to those being questioned? The language of the Supreme Court in Miranda sheds some light on this question.

"Our decision is not intended to hamper the traditional function of police officers investigating crime--when an individual is in custody on probable cause, the police may, of course, seek out evidence in the field to be used at trial against him. Such investigation may include inquiry of persons not under restraint. General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens on the fact finding process is not affected by our holding. In such situations the compelling atmosphere of in-custody interrogations is not necessarily present."

384 U.S. at 477.

From the Miranda decision we see, as a general rule, that Miranda warnings need not be given unless there is an in-custody interrogation. But what happens when a suspect is in custody for a traffic offense and is questioned after the arrest? In the case of Clay v. Riddle, 541 F. 2d 456, (1976) the United States Court Of Appeals for The Fourth Circuit, which is the Federal Court of Appeals for the states of South Carolina, North Carolina, Virginia, West Virginia, and Maryland, addressed the issue.

In a habeas corpus proceeding, appellant David Clay asked the court to vacate his conviction as a habitual offender, a felony under the state law of Virginia. His argument for setting aside his conviction was that during his trial critical incriminating evidence was admitted contrary to the rule of Miranda v. Arizona. The state of Virginia, through the Superintendent of the penitentiary where Clay was confined, denied that Clay's Fifth Amendment right against self-incrimination was violated, contending that while such testimony was introduced, it consisted only of Clay's statement to the officer, who had arrested him for driving an automobile while intoxicated, that he was the driver in the one car accident. The Fourth Circuit ruled that Clay's statement was admissible although he had not been furnished Miranda warnings.

The facts out of which Clay's arrest and conviction arose are as follows:

On the afternoon of April 25, 1972 in Halifax County, Virginia, a Sheriff's Deputy answering a report of an automobile accident, saw a 1970 green Ford off the road, down an embankment. He found Clay lying on the ground about two-tenths of a mile from the car and waving a gun at a State Trooper. The Deputy and other Troopers persuaded Clay to surrender, handcuffed him and arrested him on a charge of driving while under the influence of alcohol, a misdemeanor, Code of Va., 1950, as amended, §§ 18.1-54 and -55. 541 F. 2d at 457.

While on the way to the hospital for a breath test, Clay was asked his identity and the circumstances of the accident. The police officer did not advise Clay of his Miranda rights. Clay gave his name and said that "the car just got away from [me]" without further involving himself.

It is admitted that Clay had been declared a "habitual offender" under Virginia state law and thus his driving an automobile was a felony, however, the Trooper was not aware of this statute until after Clay was placed in jail. At that time Clay was advised of his Miranda rights and charged with the felony.

In it's decision that appellant Clay was not entitled to Miranda warnings before being questioned by the arresting officer, The Fourth Circuit Court Of Appeals observed, "it is noteworthy that the unlawful incident was a commonplace event--a traffic offense--a breach of law to which we believe the Supreme Court decision does not extend. This circumstance alone--not that the misconduct was a misdemeanor as to which Miranda has been said to be inapposite--is the basis of our present holding that Miranda warnings were not required to justify reception of Clay's acknowledgement that he was driving the car." 541 F. 2d at 457.

In reaching its decision that Miranda warnings are not required in traffic arrest, the Fourth Circuit cited several cases from other jurisdictions, which for the sake of brevity are omitted, that Miranda warnings are not required in any misdemeanor cases. However, the Court did not rule on the applicability of Miranda in misdemeanors but, instead, limited its decision as to whether it is required in traffic offenses.

While there is no South Carolina Supreme Court decision directly on point, it is the opinion of the editors that our state court would be guided by the reasoning in the Fourth Circuit's decision in Clay v. Riddle and hold that Miranda warnings are not required in traffic offenses.

LEGAL LOG is published monthly by the South Carolina Criminal Justice Academy of which John A. O'Leary is executive director. The academy's legal affairs and legal instruction are handled by James M. Kirby, senior staff counsel, Henry R. Wengrow, general counsel and Joseph H. Lumpkin, Jr., staff counsel.